



February 4, 2005

## HOUSE BILL No. 1268

DIGEST OF HB 1268 (Updated February 1, 2005 11:29 am - DI 69)

**Citations Affected:** IC 13-17.

**Synopsis:** Open burning. Allows a person who successfully challenges an open burning citation to collect attorney's fees from the department of environmental management or the political subdivision that issued the citation. Allows a person to open burn wood remnants from construction of a structure if the burn occurs in: (1) an incorporated area that is not designated as a nonattainment area for a regulated air pollutant; and (2) a container located on the same site the construction of the structure occurred.

**Effective:** July 1, 2005.

### Pond, Cherry

January 11, 2005, read first time and referred to Committee on Environmental Affairs.  
February 3, 2005, amended, reported — Do Pass.

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HB 1268—LS 6959/DI 52+



February 4, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1268

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 13-17-3-3.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2005]: **Sec. 3.5. In a proceeding or action under IC 13-14-2-6 or**  
4 **IC 13-30-3 initiated after June 30, 2005, to enforce IC 13-17-9, if a**  
5 **person:**

6           **(1) is cited for a violation of IC 13-17-9;**

7           **(2) challenges the citation; and**

8           **(3) is found in the proceeding or action not to be in violation**  
9 **of IC 13-17-9;**

10 **the department is liable for the person's reasonable attorney's fees**  
11 **that result from the proceeding or action.**

12       SECTION 2. IC 13-17-9-1 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) Subject to section  
14 3 of this chapter, a person may open burn the following for  
15 maintenance purposes:

16           (1) Vegetation from:

17               (A) a farm;

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- 1 (B) an orchard;  
 2 (C) a nursery;  
 3 (D) a tree farm;  
 4 (E) a cemetery; or  
 5 (F) a drainage ditch.
- 6 (2) Vegetation from agricultural land if the open burn occurs in  
 7 an unincorporated area.
- 8 (3) Wood products derived from pruning or clearing a roadside by  
 9 a county highway department.
- 10 (4) Wood products derived from the initial clearing of a public  
 11 utility right-of-way if the open burn occurs in an unincorporated  
 12 area.
- 13 (5) Undesirable:
- 14 (A) wood structures on real property; or  
 15 (B) wood remnants of the demolition of a predominantly  
 16 wooden structure originally located on real property;  
 17 located in an unincorporated area.
- 18 **(b) This subsection does not apply to an area that is located in**  
 19 **a region designated as a nonattainment area for a regulated air**  
 20 **pollutant. Subject to section 3 of this chapter, a person may open**  
 21 **burn wood remnants from construction of a structure if the open**  
 22 **burn occurs in:**
- 23 **(1) an incorporated area; and**  
 24 **(2) a container located on the same site the construction of the**  
 25 **structure occurred.**
- 26 ~~(b)~~ (c) A person who is allowed to open burn under subsection (a)  
 27 or (b) is not required to obtain:
- 28 (1) a permit; or  
 29 (2) any other authorization;  
 30 from the department, a unit of local government, or a volunteer fire  
 31 department before conducting the open burning.
- 32 SECTION 3. IC 13-17-12-1.5 IS ADDED TO THE INDIANA  
 33 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 34 [EFFECTIVE JULY 1, 2005]: **Sec. 1.5. In a proceeding or an action**  
 35 **initiated after June 30, 2005, to enforce an ordinance referred to in**  
 36 **section 1 of this chapter, if a person:**
- 37 **(1) is cited for a violation of an ordinance that restricts open**  
 38 **burning;**  
 39 **(2) challenges the citation; and**  
 40 **(3) is found in the proceeding or action not to be in violation**  
 41 **of the ordinance that restricts open burning;**  
 42 **the town, city, or county that adopted the ordinance is liable for the**

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1     **person's reasonable attorney's fees that result from the proceeding**  
2     **or action.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred House Bill 1268, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete lines 18 through 22, begin a new paragraph and insert:

**"(b) This subsection does not apply to an area that is located in a region designated as a nonattainment area for a regulated air pollutant. Subject to section 3 of this chapter, a person may open burn wood remnants from construction of a structure if the open burn occurs in:**

**(1) an incorporated area; and**

**(2) a container located on the same site the construction of the structure occurred."**

and when so amended that said bill do pass.

(Reference is to HB 1268 as introduced.)

WOLKINS, Chair

Committee Vote: yeas 8, nays 4.

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